

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Curves International, Inc.,

Plaintiff,

vs.

Linda S. Mosbarger,

Defendant

Case Action No. 2:07-cv-807-MHT

AFFIDAVIT OF NOEL DONALD MOORE

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

Before the undersigned Notary Public, in and for said county and state, personally appeared Donnie Moore, who, being duly sworn, deposes and says as follows:

1. My name is Noel Donald "Donnie" Moore. I have personal knowledge of the facts set forth herein. I am over the age of nineteen years, and I am competent to make this affidavit.

2. I work at Expedius Envoy as a courier and special process server.

3. On November 17, 2007, I attempted to serve Truitt K. Johnson with a non-party witness subpoena for attendance at a hearing set for November 21, 2007, in the case styled *Curves International, Inc. v. Linda S. Mosbarger*, in the United States District Court for the Middle District of Alabama, Case No. 2:07-CV-807-MHT. A copy of the subpoena is attached hereto at "Exhibit A."

4. I attempted to serve Mr. Johnson at 1792 Antioch Road, Wetumpka, Alabama, 36092. When I arrived at that location, the gate attached to the fence surrounding the property was open. I proceeded up the driveway and noticed two dwellings, a mobile home and a fixed dwelling. I first went to the mobile home and knocked on the door. When no one answered the door, I then walked to the fixed dwelling and knocked on the sliding glass door. A woman came to the door, but did not open it. I informed her that I had a delivery for Truitt K. Johnson. The woman informed me that Mr. Johnson did not live there. I then departed.

5. On November 20, 2007, I attempted to serve Mr. Johnson at the Natural Beauty Garden Center, L.L.C., 8617 US Highway 231, Wetumpka, Alabama, 36092. When I arrived, the same woman I had spoken with on November 17, 2007, came out of the office with a pair of scissors. She motioned aggressively at me and the passenger in my car with the scissors, claimed that she had previously informed me that Mr. Johnson was out of town, asserted that I was trespassing, and stated that she was calling the police. I remained at that location while the woman made a telephone call, under the assumption that she was calling the police. Although she did make a telephone call, it did not appear that she called the police at that time. She then instructed me to leave the property. I then departed.

6. Having earlier seen two police officers stopped on the highway as part of a traffic stop, I drove toward that location to inform them of what had just transpired. The police officer I spoke with, Sergeant Edwards of the Wetumpka Police Department, suggested that I continue on my way rather than go back to the Natural Beauty Garden Center.

7. I then traveled to the Wetumpka Police Department and filed a police report detailing the above-described incident. A copy of that report is attached hereto as "Exhibit B."

8. While filing the police report, I learned from the officer taking my statement, Officer Barris, that he had earlier been called to the Natural Beauty Garden Center regarding this incident but did not file a report at that time. He further informed me that the woman described in paragraphs 4 and 5 above is named Linda Lewis.

Further affiant sayeth not.

(Signature to follow)

Donnie Moore
Donnie Moore
Affiant

Sworn to and subscribed before me, this 20th day of November 2007.

Marsha E. Nelson
Notary Public

My Commission Expires: 1/20/09

EXHIBIT A

United States District Court

Middle District of Alabama
Northern Division

Curves International, Inc.,

Plaintiff,

vs.

Linda S. Mosbarger

Defendant.

SUBPOENA IN A CIVIL CASE

Case Number: 2:07cv807-MHT

To: Truitt K. Johnson
1792 Antioch Road
Wetumpka, Alabama 36092

XX YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

Frank M. Johnson, Jr. U.S. Courthouse Complex
15 Lee Street
Montgomery, Alabama 36101-0235

COURTROOM, DATE & TIME

Honorable Judge
Myron H. Thompson
November 21, 2007
10:00 a.m.

— YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE & TIME

— YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See Exhibit A attached hereto

PLACE OF PRODUCTION

DATE & TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE & TIME

**** Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).**

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Date

Joseph W. Carlisle
Attorney for Defendant Curves International, Inc.

November 16, 2007

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Joseph W. Carlisle

Johnston Barton Proctor & Rose LLP
Colonial Brookwood Center
569 Brookwood Village, Suite 569
Birmingham, Alabama 35209

(205) 458-9400
(205) 458-9500 FAX

PROOF OF SERVICE		
SERVED:	Date	Place
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on: _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a

person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(D) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT B

ALABAMA UNIFORM INCIDENT/OFFENSE REPORT

VICTIM SSN		COMPLAINANT SSN		1 INCIDENT <input checked="" type="checkbox"/> OFFENSE 2 SUPPLEMENT		3 CASE # 071100853		3 SFX	
4 ORI # 0290100		5 DATE AND TIME OF THIS REPORT 11/20/07 12:40		6 AGENCY NAME Wetumpka Police Dept		7 IF SUPPLEMENT ORIGINAL OFFENSE DATE M D Y			
8 REPORTED BY <input type="checkbox"/> VICTIM OR		9 ADDRESS (STREET, CITY, STATE, ZIP)		10 PHONE ()		11 PHONE ()		12 PHONE ()	
12 VICTIM (LAST, FIRST, MIDDLE NAME) Moore, Noel Donald		13 ADDRESS (STREET, CITY, STATE, ZIP) 2724 Brenda Cir. Gardendale AL 35071		14 PHONE 205 681-7779		15 PHONE 205 681-7779		16 PHONE 205 681-7779	
17 EMPLOYER/SCHOOL Expeditor Envy Process Serv		18 OCCUPATION 144 Thompson Cir. Gardendale AL 35071		19 PHONE 205 681-7779		20 PHONE 205 681-7779		21 PHONE 205 681-7779	
22 RESIDENT <input checked="" type="checkbox"/> NON-RESIDENT <input type="checkbox"/>		23 INJURY <input checked="" type="checkbox"/> Y <input type="checkbox"/> N		24 RACE <input checked="" type="checkbox"/> A MALE <input type="checkbox"/> B FEMALE		25 SEX <input checked="" type="checkbox"/> A MALE <input type="checkbox"/> B FEMALE		26 AGE 57	
27 HGT 5'7"		28 WGT 186		29 DOB 02/24/46		30 WAS OFFENDER KNOWN TO VICTIM? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N		31 VICTIM WAS (EXPLAIN RELATIONSHIP) Stranger	
32 TYPE INCIDENT OR OFFENSE Miscellaneous Report		33 DEGREE (CIRCLE) 1 2 3		34 UCR CODE		35 STATE CODE/LOCAL ORDINANCE			
36 TYPE INCIDENT OR OFFENSE Miscellaneous Report		37 DEGREE (CIRCLE) 1 2 3		38 UCR CODE		39 STATE CODE/LOCAL ORDINANCE			
40 PLACE OF OCCURRENCE 8617 US HWY 231 Wetumpka / Nature / Beauty Garden Ctr		41 POINT OF ENTRY <input checked="" type="checkbox"/> DOOR <input type="checkbox"/> WINDOW <input type="checkbox"/> OTHER		42 METHOD OF ENTRY <input checked="" type="checkbox"/> FORCIBLE <input type="checkbox"/> ATT. FORCIBLE <input type="checkbox"/> NO FORCE		43 ASSAULT <input checked="" type="checkbox"/> SIMPLE <input type="checkbox"/> AGGR.		44 TREATMENT FOR <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	
45 OCCURRED ON OR BETWEEN 11/20/07 11:45		46 TIME 11:45		47 LIGHTING <input checked="" type="checkbox"/> NATURAL <input type="checkbox"/> ART. EXT. <input type="checkbox"/> ART. INT. <input type="checkbox"/> UNK.		48 WEATHER <input checked="" type="checkbox"/> CLEAR <input type="checkbox"/> CLOUDY <input type="checkbox"/> RAIN <input type="checkbox"/> FOG <input type="checkbox"/> SNOW <input type="checkbox"/> HAIL <input type="checkbox"/> UNK.		49 PREMISE <input checked="" type="checkbox"/> HWY.—ST.—ALLEY <input type="checkbox"/> BANK <input type="checkbox"/> RAILROAD <input type="checkbox"/> DRUG STORE <input type="checkbox"/> RESIDENCE <input type="checkbox"/> APT./TWN. HSE. <input type="checkbox"/> CHURCH <input type="checkbox"/> SHOPPING CENTER <input type="checkbox"/> SCHOOL <input type="checkbox"/> PARKING LOT <input type="checkbox"/> CONVENIENCE <input type="checkbox"/> OTHER COMMER. <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> SERVICE STA. <input type="checkbox"/> OTHER	
50 VERIFY FOR <input type="checkbox"/> Y <input checked="" type="checkbox"/> N		51 TREAT. FOR <input type="checkbox"/> Y <input checked="" type="checkbox"/> N		52 CIRCUMSTANCES HOMICIDE & ASSAULT		53 CODE		54 CODE	
55 WEAPON USED <input checked="" type="checkbox"/> FIREARM <input type="checkbox"/> HANDS, FISTS, VOICE, ETC. <input type="checkbox"/> KNIFE <input type="checkbox"/> OTHER DANGEROUS		56 DESCRIPTION OF WEAPONS/FIREARMS/TOOLS USED IN OFFENSE		57 HANDGUN <input type="checkbox"/> RIFLE <input type="checkbox"/> SHOTGUN <input type="checkbox"/> UNKNOWN		58		59	
60 QUANTITY		61 STOLEN, RECOVERED, LOST, FOUND OR DESTROYED (INCLUDE MAKE, MODEL, SIZE, TYPE, SERIAL NUMBER, COLOR, ETC.)		62 DOLLAR VALUE STOLEN DAMAGED DATE VALUE		63 RECOVERED DATE VALUE			
64 MOTOR VEHICLE		65 CURRENCY, NOTES		66 JEWELRY		67 CLOTHING/FURS		68 FIREARMS	
69 ELECTRONICS		70 HOUSEHOLD		71 CONSUMABLE GOODS		72 LIVESTOCK		73 MISCELLANEOUS	
74 CHECK CATEGORIES <input checked="" type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> SUSPECTS VEH. <input type="checkbox"/> VICTIMS VEH. <input type="checkbox"/> UNAUTH. USE <input type="checkbox"/> ABANDONED		75 # STOLEN		76 LIC.		77 LIS.		78 LIJ.	
79 TAG COLOR		80 VIN		81 VYR		82 VMA		83 VMO	
84 VST		85 VCO: TOP: BOTTOM:		86 ADDITIONAL DESCRIPTION		87 OWNERSHIP <input checked="" type="checkbox"/> TAG RECEIPT <input type="checkbox"/> BILL OF SALE <input type="checkbox"/> TITLE <input type="checkbox"/> OTHER		88 WARRANT SIGNED	
89 AUTO INSURER NAME (COMPANY) ADDRESS (STREET, CITY, STATE, ZIP)		90 STOLEN IN YOUR JURISDICTION? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N WHERE?		91 RECOVERED IN YOUR JURISDICTION? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N WHERE?		92 PHONE ()			

TYPE OR PRINT IN BLACK INK

ACJIC—32 REV 8-96

INCHES

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OFFICER'S WORK PRODUCT MAY NOT BE PUBLIC INFORMATION

INCIDENT/OFFENSE REPORT CONTINUED		95 DATE AND TIME OF REPORT 11/20/07 12:40		96 CASE # 071100853		97 SFX		98 1 OFFENDER SUSPECT 2 MISSING PERSON		99 CHECK IF MULTIPLE	
99 NAME (LAST, FIRST, MIDDLE) Lewis, Linda				100 NICKNAME/ALIAS		101 RACE W 3 A 2 B 4 I		102 SEX 1 M 2 F		103 DOB M D Y	
105 ADDRESS (STREET, CITY, STATE, ZIP)				106 HGT 57		107 WGT 140		108 EYE BLU		109 HAIR BLN	
111 PROBABLE DESTINATION				112 ARMED? 1 Y 2 N 3 UNK.		113 WEAPON		114 CLOTHING		115 1 ARRESTED 2 WANTED	
116 NAME (LAST, FIRST, MIDDLE)				117 NICKNAME/ALIAS		118 RACE 1 W 3 A 2 B 4 I		119 SEX 1 M 2 F		120 DOB M D Y	
122 ADDRESS (STREET, CITY, STATE, ZIP)				123 HGT		124 WGT		125 EYE		126 HAIR	
128 PROBABLE DESTINATION				129 ARMED? 1 Y 2 N 3 UNK.		130 WEAPON		131 CLOTHING		132 1 ARRESTED 2 WANTED	
133 NAME (LAST, FIRST, MIDDLE) SEX, RACE, DOB				134 ADDRESS (STREET, CITY, STATE, ZIP)				135 RES. PHONE ()		136 BUS. PHONE ()	
WITNESSES				WITNESS #1 SSN				WITNESS #2 SSN			
WITNESS #3 SSN				WITNESS #4 SSN				WITNESS #5 SSN			
NARRATIVE				137				138 LOCAL USE			
Victim went to Natural Beauty Garden Center to serve Truitt K Johnson some papers. While walking up to the business he was approached by the listed suspect. Victim said that the suspect was hysterical and shouting "I told you he was out of town Saturday."											
The suspect also had a pair of scissors in her hand. Also the suspect accused the victim of stalking her. Later the victim was ordered off the premises in which he complied. A report was made for future reference.											
ASSISTING AGENCY ORI				ASSISTING AGENCY CASE #				SFX			
I hereby affirm that I have read this report and that all information given by me is correct to the best of my knowledge. I will assume full responsibility for notifying this agency if any stolen property or missing person hereby reported is returned.				139 STATE USE				140 LOCAL USE			
SIGNATURE <i>X Noel Donald Moore</i>											
147 CASE STATUS 1 PENDING 2 INACTIVE 3 CLOSED ENTERED ACIC/NCIC DATE				148 CASE DISPOSITION: 1 CLEARED BY ARREST (JUV.) 2 CLEARED BY ARREST (ADULT) 3 UNFOUNDED 4 ADM. CLEARED				149 REPORTING OFFICER Barri			
150 ASSISTING OFFICER				151 SUPERVISOR APPROVAL				152 WATCH CMDR.			
146 ADDITIONAL CASES CLOSED Y N				147 CASE STATUS				148 CASE DISPOSITION			